

witnesses. One of them, Yong Nam Seng, a Director of Woh Hup & Co. Ltd., Building Contractors, said:—

"As a firm we have to borrow money on occasions. We usually borrowed from Banks. If that is not possible we borrowed from friends or other building contractors If we borrow from a friend or another building contractor we do not give security, it is all temporary, two months or three months. When we have money and when we are approached by people from whom we had borrowed in the past we would lend—temporary loans, no interest, no security We made advances to sub-contractors. I think this practice of lending and borrowing is usual with other building contractors in Singapore. We lend money only to people who lent us money in the past, this is a sort of reciprocal arrangement."

The other witness, Tham Poh Leong, Manager and Partner of Central Construction Co. since 1945 said in examination-in-chief:—

"Central Construction Co. doing building construction work. In the course of our business we have occasion to borrow money We usually borrowed from our Bank on security. If Bank would not lend any more money we had to go to friends and asked for a temporary loan. So far we have borrowed from friends who are not building contractors. I think other building contractors also have to borrow money as they need big capital. The money that we borrowed from friends would be for a few months—three or four months."

In cross-examination he said:—

"We do lend money to friends, small sums, maximum \$2,000 to \$3,000. I would get the money from my firm and that is debited to my account with the firm and I would lend the money. Any loss incurred would be my personal loss and not my Company's loss.

Loans to friends indirectly connected with our business. Lending to friends is not an essential part of my firm's business"

In my opinion the evidence adduced before this Court does not prove such a practice or custom. Furthermore the present case is not on all fours with the *Reids Brewery case*. In the *Brewery case* the brewers only lent money to their own customers. In the present case the money was lent by the appellant to a stranger who was not even connected with the building trade.

I agree entirely with the decision of the Board of Review that the loan made by the appellant to Mr. Fu was not an essential part of the appellant's business nor was it essentially necessary to his business and that it is not an outgoing or expense wholly and exclusively incurred in the production of income for the business.

The result is that this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw.*

NG HUI LIP & ANOR. v. CHAN HWA CHENG & ORS.

[O. C. J. (Smith J.) September 25, 1957]

[K. L. — Civil Suit No. 31 of 1957]

Practice — Security for costs — Plaintiffs resident in Singapore — Application for order that plaintiffs give security for costs — Court's discretion — Civil Procedure Code (Cap. 7), s. 369(i).

In this case the defendants applied to the Court for an order that the plaintiffs to give security for the payment of costs as the plaintiffs were partners in a firm which is not registered in the Federation and had given Singapore addresses. It was argued on behalf of the plaintiffs that on the authority of *Coldham v. Raub Australian Gold Mining Co. Ltd.*⁽¹⁾ no security for costs should be required from a plaintiff residing in Singapore and suing in the Supreme Court of the Federation, as the Reciprocal Enforcement of Judgments Ordinance provided for the enforcement of judgments of the Courts of the Federation in Singapore.

Held: the enforcement of a Federation judgment in Singapore was not automatic and therefore the mere fact that a plaintiff is resident in Singapore is not a ground for the Court refusing to order security for costs under section 369 of the Civil Procedure Code.

Cases referred to:—

- (1) *Coldham v. Raub Australian Gold Mining Co. Ltd.* (1940) M.L.J. 50; (1939) F.M.S. L.R. 160.
- (2) *Raeburn v. Andrews* L.R. 9 Q.B. 118.
- (3) *In re Howe Machine (Fontaine's Case)* 41 Ch. D. 118.
- (4) *Kohn v. Rinson & Stafford (Brod.) Ltd.* (1948) 1 K.B. 327.

CIVIL SUIT.

Ng Ek Teong for the plaintiffs.

R. H. V. Rintoul for the defendants.

Smith J.:—The two plaintiffs in this case are partners in a firm which is not registered in the Federation. Both plaintiffs have given Singapore addresses. Relying on section 369(i) of the Civil Procedure Code the defendants have applied to the Court for an order that the plaintiffs do give security for the payment of all costs incurred and likely to be incurred by the defendants.

It is not disputed that the power of the Court to order security is discretionary. The exercise of this power in relation to persons resident in the Colony was considered in detail by Poyser C.J. in *Coldham v. Raub Australian Gold Mining Co. Ltd.*⁽¹⁾ From the judgment of the learned Chief Justice it seems that he accepted the arguments put forward by plaintiff's counsel which is summarised as follows at page 51:—

"Since the passing of the Judgments Extension Acts 1868 (31 and 32 Vict. C. 54) security for costs has not been required of a plaintiff residing in Scotland and suing in the High Court in England: *Raeburn v. Andrews*⁽²⁾ and *In re Howe Machine Company*⁽³⁾. The Straits Settlements Reciprocal Enforcement of Judgments Ordinance

(Cap. 46) and the Straits Settlements Gazette Notification 1190 of 1924 provide machinery for the enforcement of judgments of the Courts of the Federated Malay States against plaintiffs residing in the Straits Settlements similar to the machinery provided by the Judgments Extension Acts for the enforcement of English judgments against plaintiffs residing in Scotland. Security for costs should not be required from a plaintiff residing in the Straits Settlements and suing in the Supreme Court of the Federated Malay States."

The learned Chief Justice went on to say as follows at page 53 :—

"I would not hold as a matter of law that security for costs cannot be ordered against a plaintiff resident in any British territory where provision exists for the reciprocal enforcement of judgments with the Federated Malay States; but there is all the difference between enforcing a Federated Malay States judgment in the Colony and enforcing one in, say, Uganda. We have very close legal relations with the Colony, a Federated Malay States judgment could be quickly enforced there, and in regard to plaintiffs resident there, I would follow the decision in *Raeburn v. Andrews*(2)."

From counsel's reasoning in that case it appears that it was considered that the S.S. Reciprocal Enforcement of Judgments Ordinance (Cap. 46 in 1936 ed. and now Cap. 18 in 1955 edition) was *in pari materia* with the Judgments Extension Act, 1868. In my opinion this is not so. The Court did not then, of course, have before it the valuable judgment of Denning J. (as he then was) in *Kohn v. Rinson & Stafford (Brod.) Ltd.*(4). In this case Lord Denning, points out the difference between the United Kingdom Judgments Extension Act, 1868, and the Foreign Judgments (Reciprocal Enforcement) Act, 1933, which is *in pari materia* with the Singapore Ordinance (Cap. 18). The United Kingdom Act enables a judgment obtained in England to be automatically registered in Scotland and enforced immediately as if it were a judgment of the Scottish Court. Lord Denning, then goes on to point out the difference between the United Kingdom Act and the Foreign Judgments (Reciprocal Enforcement) Act, 1933 in the following words at p. 331 :—

"But in my judgment the process which is introduced by the Acts of 1920 and of 1933 is very different from that of the Judgments Extension Act, 1868. It is a process which involves a judicial officer being put in motion and which may be the subject of dispute and even in some cases of trial between the parties. The process of registering a judgment is not automatic in any sense as it was in the case of the Judgments Extension Act, 1868. Approaching the matter, as I think it right to do, as a matter ultimately of discretion, I am quite satisfied that the process in regard to these other countries other than Scotland and Northern Ireland is so different that the reasoning in *Raeburn v. Andrews* does not apply to them and that in the case of the British Dominions outside the United Kingdom, territories which are under Her Majesty's protection, territories in respect of which a mandate under the League of Nations has been accepted by His Majesty or in the case of foreign countries, the old rule still applies and as a matter of course security for costs should be made where the plaintiff is resident out of the jurisdiction and has no assets here."

It is quite clear that Rule 12 of the rules made under section 3(4)(c) of the Singapore Ordinance

A Cap. 18 (S.S. G.N. 2035/1922) involves the possible putting in motion of a judicial officer who has the power to refuse to act on the judgment until he has made further enquiries. The rule reads as follows :—

B "The Judgment Debtor may at any time within the time limited by the Order giving leave to register after service on him of the notice of the registration of the Judgment apply by summons to a Judge to set aside the registration or to suspend execution on the Judgment and the Judge on such application if satisfied that the case comes within one of the cases in which under section 3(2) of the Ordinance no Judgment can be ordered to be registered or that it is not just or convenient that the Judgment should be enforced in the Colony or for other sufficient reason may order that the registration be set aside or Execution on the Judgment suspended either unconditionally or on such terms as he thinks fit and either altogether or until such time as he shall direct: Provided that the Judge may allow the application to be made at any time after the expiration of the time herein mentioned."

Although Poyser C.J. did not decide the case on this particular ground, he was clearly of the opinion that enforcement of a judgment obtained in the F.M.S. D could be enforced in the Colony of Singapore in the same manner as a judgment obtained in England can be enforced in Scotland. In arriving at this conclusion the learned Chief Justice was, in my opinion and with great respect, under a misapprehension as has been shown by Lord Denning.

E I therefore consider that the mere fact that a plaintiff is resident in Singapore is not a ground for the Court refusing to order security for costs under section 369 of the Civil Procedure Code.

F Section 369 of the Civil Procedure Code has, however, two limbs. Before any Court will exercise its discretion the defendant must show first that the plaintiffs reside out of the Federation, and secondly that none of the plaintiffs possess sufficient immovable property within the Federation to satisfy a judgment for costs.

G The defendants' affidavit does not allege, as one might have anticipated, that neither plaintiff has, to the best of the appellants' belief, sufficient immovable property in the Federation. The point, however, has not been taken by the plaintiff whom I therefore deem to admit that they have no such property.

H I am of opinion that the defendants are entitled to security for their costs and I accordingly remit the summons to the Registrar for him to fix the amount of the security.

I The defendant are awarded the costs of this application.

Order accordingly.

Solicitors: Braddell & Ramani; Shearn Delamore & Co.